

Vigeland v Sand Assoc., L.P.

2025 NY Slip Op 32567(U)

July 7, 2025

Supreme Court, New York County

Docket Number: Index No. 652444/2023

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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LAUREN VIGELAND,	INDEX NO.	<u>652444/2023</u>
Plaintiff,	MOTION DATE	<u>01/31/2025</u>
- v -	MOTION SEQ. NO.	<u>002</u>
SAND ASSOCIATES, L.P., RICHARD FLASTER		
Defendants.	DECISION + ORDER ON MOTION	

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 were read on this motion for ATTORNEY FEES.

Plaintiff Lauren Vigeland (“Vigeland”) moves for an order awarding attorneys’ fees and costs and for an inquest to determine the amount to be awarded. Defendants Sand Associates, L.P. (“Sand” or the “Partnership”) and Richard Flaster (“Flaster”) (collectively, “Defendants”) oppose the motion. For the reasons set forth below, Vigeland’s motion is granted.

Vigeland and Flaster are general partners in Sand. On May 19, 2023, Vigeland commenced this action asserting one cause of action alleging that Defendants had refused to give her access to inspect the books and records of the Partnership in violation of New York Partnership Law and common law. On July 28, 2023, Defendants filed their Answer (NYSCEF 13). On December 26, 2024, the parties filed a stipulation discontinuing the case with prejudice, “except that the parties preserve any claims they may have for attorneys’ fees” (NYSCEF 33).

On January 31, 2025, Vigeland filed the instant motion seeking attorneys’ fees pursuant to Paragraph 20 of the Partnership Agreement, which states:

ATTORNEYS' FEES. Should any party hereto institute any action or proceeding at law or in equity to enforce any provision hereof, including an action for declaratory relief or for damages by reason of an alleged breach of any provision of this Agreement, or otherwise in connection with this Agreement, or any provision hereof, the prevailing party shall be entitled to recover from the losing party or parties reasonable attorneys' fees and costs for services rendered to the prevailing party in such action or proceeding

(NYSCEF 39 at 18). Vigeland argues that she is entitled to attorneys' fees under this provision because she was granted full access to the books and records of the Partnership only after she commenced this action. She maintains that, having obtained the sole relief she requested, she qualifies as the "prevailing party" under Paragraph 20 and is therefore entitled to attorneys' fees.

In opposition, Defendants argue, primarily, that Vigeland was not a "prevailing party" under Paragraph 20 of the Agreement because the matter was resolved through settlement rather than a decision by the Court. Defendants contend that the absence of judicial determination precludes a finding that Vigeland was a prevailing party.

"Under the general rule, attorney's fees are incidents of litigation and a prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties, statute or court rule" (*Hooper Assoc., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491 [1989]). Where there is an agreement between the parties permitting a prevailing party to collect legal expenses, such agreement must be "unmistakably clear" (*Sage Sys., Inc. v Liss*, 39 NY3d 27, 33 [2022]). "To determine whether a party has 'prevailed' for the purpose of awarding attorneys' fees, the court must consider the 'true scope' of the dispute litigated and what was achieved within that scope" (*Sykes v RFD Third Ave. I Assoc., LLC*, 39 AD3d 279 [1st Dept 2007]). "To be considered a 'prevailing party,' one must simply prevail on the central claims advanced, and receive substantial relief in consequence thereof" (*id.*).

Here, Vigeland commenced this action after several requests for full access to the Partnership books and records were denied. Vigeland's only cause of action was for inspection of those records (NYSCEF 38, Complaint ¶¶ 50-61). It was only after commencing the suit and negotiating a settlement agreement that Vigeland ultimately gained full access to the books and records. The settlement agreement conditioned the filing of the Stipulation of Discontinuance with the Court upon satisfactory completion of the agreed inspection (NYSCEF 41 at 7).

Defendants' argument that the lack of a court determination on the merits precludes recovery of attorneys' fees is unavailing. The facts here are analogous to those in *Sykes*, where the court held that plaintiffs had "sufficiently prevailed on their claim" and thus, were entitled to attorneys' fees, even though they obtained the relief they sought "through stipulation rather than through a judicial determination" (*Sykes*, 39 AD3d at 280). Similarly here, the Court finds that Vigeland was the prevailing party within the meaning of Paragraph 20 of the Partnership Agreement.

Defendants' reliance on *Lackey v Stinnie*, 145 S Ct 659 (2025) is misplaced. In *Lackey*, the Court considered whether a party that gains a preliminary injunction would qualify as "prevailing party" under 42 U.S.C. § 1983 (145 S Ct 659, 662 [2025]). However, "[i]n contrast to certain federal statutes that provide for attorneys' fees only if the prevailing party's success is a product of 'judicial imprimatur,' [...] New York has no such requirement for an attorneys' fees award provided by contract" (*Darling Capital LLC v Newgioco Group, Inc.*, 16-CV-8943 (PKC), 2018 WL 5869643, at *3 [SDNY Nov. 9, 2018]).

Defendants further argue that Vigeland's claim in the underlying action was not "in connection with" the Partnership Agreement because it sought relief under New York Partnership Law and common law. That argument fails. The Partnership Agreement expressly

governs the partners’ rights and obligations with respect to books and records. Therefore, the Partnership Agreement was clearly implicated in the underlying action.

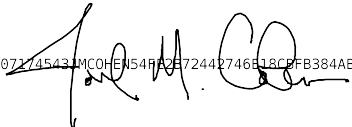
The Court has considered Defendants’ remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that Vigeland’s motion is **GRANTED**; it is further

ORDERED that Plaintiff shall submit a proposed judgment and her application for attorney’s fees and costs with supporting documentation within fourteen (14) days of the date of this Order; Defendant shall have fourteen (14) days thereafter to file any objections. Plaintiff shall notify the Court via letter filing on NYSCEF and by email when the application is complete and whether it is opposed or unopposed.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

7/7/2025
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE